

**Exhibit F**

**FILED**

AUG 11 2010

CLERK U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY [Signature] DEPUTY CLERK

Shelley von Brincken  
14738 Wolf Rd  
Grass Valley CA 95949

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

**Shelley von Brincken**

Plaintiff,

vs.

**MORTGAGECLOSE.COM INC.**

Defendant

**Executive Trust Services dba ETS**

**Services, LLC**

Defendant

Case #

**210-11-2153 JAM KJN**

**ORIGINAL PETITION**

PS

Date: 8/10/10

Comes now Shelley von Brincken, hereinafter referred to as "Petitioner," and moves the court for relief as herein requested:

**PARTIES**

Petitioner is Shelley von Brincken, 14738 Wolf Rd Grass Valley CA 95949.

Currently Known Defendant(s) are/is: MORTGAGECLOSE.COM INC., 1855

WEST KATELLA AVE, SUITE 200 ORANGE, CA 92867, Executive Trust

Services dba ETS Services, LLC LLC 2255 N. Ontario St, Ste 400, Burbank, CA

91504 by and through its attorney.

**STATEMENT OF CAUSE**

Petitioner, entered into a consumer contract for the refinance of a primary residence located at 14738 Wolf Rd, Grass Valley CA 95949, hereinafter referred to as the "property."

1 Defendants, acting in concert and collusion with others, induced Petitioner to enter  
2 into a predatory loan agreement with Defendant.

3 Defendants committed numerous acts of fraud against Petitioner in furtherance of a  
4 carefully crafted scheme intended to defraud Petitioner.

5 Defendants failed to make proper notices to Petitioner that would have given  
6 Petitioner warning of the types of tactics used by Defendants to defraud Petitioner.

7 Defendants charged false fees to Petitioner at settlement.  
8

9 Defendants used the above referenced false fees to compensate agents of Petitioner  
10 in order to induce said agents to breach their fiduciary duty to Petitioner.

11 Defendant's attorney caused to be initiated collection procedures, knowing said  
12 collection procedures in the instant action were frivolous as lender is estopped  
13 from collection procedures, under authority of Uniform Commercial Code 3-501,  
14 subsequent to the request by Petitioner for the production of the original  
15 promissory note alleged to create a debt.

16 **IN BRIEF**

17 *(Non-factual Statement of Posture and Position)*

18 It is not the intent of Petitioner to indict the entire industry. It is just that  
19 Plaintiff will be making a number of allegations that, outside the context of  
20 the current condition of the real estate industry, may seem somewhat  
21 outrageous and counter-intuitive.

22 When Petitioner accuses ordinary individuals of acting in concert and  
23 collusion with an ongoing criminal conspiracy, it tends to trigger an  
24 incredulous response as it is unreasonable to consider that all Agents, loan  
25 agents, appraisers, and other ordinary people, just doing what they have been  
26 trained to do, are out to swindle the poor unsuspecting borrower.  
27  
28

1 The facts Petitioner is prepared to prove are that Petitioner has been harmed  
2 by fraud committed by people acting in concert and collusion, one with the  
3 other. Petitioner has no reason to believe that the Agent, loan officer,  
4 appraiser, and others were consciously aware that what they were doing was  
5 part of an ongoing criminal conspiracy, only that it was, and they, at the very  
6 least, kept themselves negligently uninformed of the wrongs they were  
7 perpetrating. Petitioner maintains the real culprit is the system itself,  
8 including the courts, for failure to strictly enforce the consumer protection  
9 laws.

10 **CAREFULLY CRAFTED CRIMINAL CONNIVANCE**

11 *(General State of the Real Estate Industry)*

12 ***THE BEST OF INTENTIONS***

13  
14 Prior to the 1980's and 1990's ample government protections were in place to  
15 protect consumers and the lending industry from precisely the disaster we  
16 now experience. During President Clinton's administration, under the guise  
17 of making housing available to the poor, primary protections were relaxed  
18 which had the effect of releasing the unscrupulous on the unwary.

19 Prior to deregulation in the 1980's, lenders created loans for which they held  
20 and assumed the risk. Consequently, Americans were engaged in safe and  
21 stable home mortgages. With the protections removed, the unscrupulous  
22 lenders swooped in and, instead of making loans available to the poor, used  
23 the opportunity to convince the unsophisticated American public to do  
24 something that had been traditionally taboo; home buyers were convinced to  
25 speculate with their homes, their most important investment.

26 MORTGAGECLOSE.COM INC. , Ameriquet, Countrywide, and many  
27 others swooped in and convinced Americans to sell their homes, get out of  
28 their safe mortgage agreements, and speculate with the equity they had gained

1 by purchasing homes they could not afford. Lenders created loans intended  
2 to fail as, under the newly crafted system, the Lender profited more from a  
3 mortgage default than from a stable loan.

4 Companies cropped up who called themselves banks when, in fact, they were  
5 only either subsidiaries of banks, or unaffiliated companies that were  
6 operated for the purpose of creating and selling promissory notes. As will be  
7 demonstrated, these companies then profited from the failure of the  
8 underlying loans.

### 9 ***HOW IT WORKS***

10 Briefly, how it works is this, the Lender would secure a large loan from a  
11 large bank, convert that loan into 20 and 30 year mortgages and then sell the  
12 promise to pay to an investor.

13 People would set up mortgage companies buy securing a large loan from one  
14 of the major banks, then convert that loan into 20 and 30 year mortgages. In  
15 order to accomplish this an Agent would contract with a seller to find a buyer,  
16 bring both seller and buyer to a lender who would secure the title from the  
17 seller using the borrowed bank funds for that purpose, and then trade the title  
18 to the buyer in exchange for a promissory note.

19 The lender then creates a 20 or 30 year mortgage with money the lender must  
20 repay within 6 months. As soon as the closing is consummated, the  
21 promissory note is sold to an investor pool.

22 Using the instant case as an example, a 220,000.00 note at 5.9140% interest  
23 over 30 years will produce \$180,455.33 The lender can then offer to the  
24 investor the security instrument (promissory note) at say 50% of it's future  
25 value. The investor will, over the life of the note, less approximately 3.00%  
26 servicing fees, realize \$233,152.81 . The lender can then pay back the bank  
27  
28

1 and retain a handsome profit in the amount of \$27,574.64. The lender,  
2 however, is not done with the deal.

3 The lender signed over the promissory note to the investor at the time of the  
4 trade, but did not sign over the lien document (mortgage or deed of trust).

5 The State of Kansas Supreme Court addressed this issue and stated that such  
6 a transaction was certainly legal. However, it created a fatal flaw as the  
7 holder of the lien document, at time of sale of the security instrument,  
8 received consideration in excess of the lien amount. Since the lien holder  
9 received consideration, he could not be harmed. Therefore the lien became  
10 an unenforceable document.

11 This begs the question: if keeping the lien would render it void, why would  
12 the lender not simply transfer the lien with the promissory note? The reason  
13 is because the lender will hold the lien for three years, file an Internal  
14 Revenue Service Form 1099a, claim the full amount of the lien as abandoned  
15 funds, and deduct the full amount from the lender's tax liability. The lender,  
16 by this maneuver, gets consideration a second time. And still the lender is not  
17 done profiting from the deal.

18 After sale of the promissory note, the lender remains as the servicer for the  
19 investor. The lender will receive 3% of each payment the lender collects and  
20 renders to the investor pool. However, if the payment is late, the lender is  
21 allowed to assess an extra 5% and keep that amount. Also, if the loan  
22 defaults, the lender stands to gain thousands for handling the foreclosure.

23 The lender stands to profit more from a note that is overly expensive, than  
24 from a good stable loan. And where, you may ask, does all this profit come  
25 from? It comes from the equity the borrower had built up in the home. And  
26 still the lender is not finished profiting from the deal.

27 Another nail was driven in the American financial coffin when on the last day  
28 Congress was in session in 2000 when restrictions that had been in place



1 since the economic collapse of 1907 were removed. Until 1907 investors  
2 were allowed to bet on stocks without actually buying them. This unbridled  
3 speculation led directly to an economic collapse. As a result the legislature  
4 banned the practice, until the year 2000. In 2000 the unscrupulous lenders  
5 got their way on the last day of the congressional session. Congress removed  
6 the restriction banning derivatives and again allowed the practice, this time  
7 taking only 8 years to crash the stock market. This practice allowed the  
8 lender to profit further from the loan by betting on the failure of the security  
9 instrument he had just sold to the unwary investor, thus furthering the  
10 purpose of the lender to profit from both the borrower (consumer) and the  
11 investor.

12 The failure of so many loans recently resulted in a seven hundred and fifty  
13 billion dollar bailout at the expense of the taxpayer. The unsuspecting  
14 consumer was lulled into accepting the pronouncements of the lenders,  
15 appraisers, underwriters, and trustees as all were acting under the guise of  
16 government regulation and, therefore, the borrower had reason to expect good  
17 and fair dealings from all. Unfortunately, the regulations in place to protect  
18 the consumer from just this kind of abuse were simply being ignored.

19 The loan origination fee from the HUD1 settlement statement is the finder's  
20 fee paid for the referral of the client to the lender by a person acting as an  
21 agent for the borrower. Hereinafter, the person or entity who receives any  
22 portion of the yield spread premium, or a commission of any kind consequent  
23 to securing the loan agreement through from the borrower will be referred to  
24 as "Agent." The fee, authorized by the consumer protection law is restricted  
25 to 1% of the principal of the note. It was intended that the Agent, when  
26 seeking out a lender for the borrower, would seek the best deal for his client  
27 rather than who would pay him the most. That was the intent, but not the  
28 reality. The reality is that Agents never come away from the table with less

1 than 2% or 3% of the principal. This is accomplished by undisclosed fees to  
2 the Agent in order to induce the Agent to breach his fiduciary duty to the  
3 borrower and convince the borrower to accept a more expensive loan product  
4 than the borrower qualifies for. This will generate more profits for the lender  
5 and, consequently, for the Agent.

6 It is a common practice for lenders to coerce appraisers to give a higher  
7 appraisal than is the fair market price. This allows the lender to increase the  
8 cost of the loan product and give the impression that the borrower is justified  
9 in making the purchase.

10 The lender then charges the borrower an underwriting fee in order to  
11 convince the borrower that someone with knowledge has gone over the  
12 conditions of the note and certified that they meet all legal criteria. The  
13 trustee, at closing, participates actively in the deception of the borrower by  
14 placing undue stress on the borrower to sign the large stack of paperwork  
15 without reading it. The trustee is, after all, to be trusted and has been paid to  
16 insure the transaction. This trust is systematically violated for the purpose of  
17 taking unfair advantage of the borrower. The entire loan process is a  
18 carefully crafted contrive connivance designed and intended to induce the  
19 unsophisticated borrower into accepting a loan product that is beyond the  
20 borrowers means to repay. With all this, it should be a surprise to no one that  
21 this country is having a real estate crisis.

22 **PETITIONER WILL PROVE THE FOLLOWING**

23 Petitioner is prepared to prove, by a preponderance of evidence that:

- 24 • Lender has no legal standing to bring collection or foreclosure claims  
25 against the property;
- 26 • Lender is not a real party in interest in any contract which can claim a  
27 collateral interest in the property;
- 28



- 1 • even if Lender were to prove up a contract to which Lender had  
2 standing to enforce against Petitioner, no valid lien exists which would  
3 give Lender a claim against the property;
- 4 • even if Lender were to prove up a contract to which Lender had  
5 standing to enforce against Petitioner, said contract was fraudulent in  
6 its creation as endorsement was secured by acts of negligence, common  
7 law fraud, fraud by non-disclosure, fraud in the inducement, fraud in  
8 the execution, usury, and breaches of contractual and fiduciary  
9 obligations by Mortgagee or "Trustee" on the Deed of Trust,  
10 "Mortgage Agents," "Loan Originators," "Loan Seller," "Mortgage  
11 Aggregator," "Trustee of Pooled Assets," "Trustee or officers of  
12 Structured Investment Vehicle," "Investment Banker," "Trustee of  
13 Special Purpose Vehicle/Issuer of Certificates of 'Asset-Backed  
14 Certificates,'" "Seller of 'Asset-Backed' Certificates (shares or bonds),"  
15 "Special Servicer" and Trustee, respectively, of certain mortgage loans  
16 pooled together in a trust fund;
- 17 • Defendants have concocted a carefully crafted connivance wherein  
18 Lender conspired with Agents, et al, to strip Petitioner of Petitioner's  
19 equity in the property by inducing Plaintiff to enter into a predatory  
20 loan inflated loan product;
- 21 • Lender received unjust enrichment in the amount of 5% of each  
22 payment made late to Lender while Lender and Lender's assigns acted  
23 as servicer of the note;
- 24
- 25
- 26
- 27
- 28

- 1 • Lender and Lender's assigns, who acted as servicer in place of Lender,  
2 profited by handling the foreclosure process on a contract Lender  
3 designed to have a high probability of default;
- 4 • Lender intended to defraud Investor by converting the promissory note  
5 into a security instrument and selling same to Investor;
- 6 • Lender intended to defraud Investor and the taxpayers of the United  
7 States by withholding the lien document from the sale of the  
8 promissory note in order that Lender could then hold the lien for three  
9 years, then prepare and file Internal Revenue Form 1099a and falsely  
10 claim the full lien amount as abandoned funds and deduct same from  
11 Lender's income tax obligation;
- 12 • Lender defrauded backers of derivatives by betting on the failure of the  
13 promissory note the lender designed to default;
- 14 • participant Defendants, et al, in the securitization scheme described  
15 herein have devised business plans to reap millions of dollars in profits  
16 at the expense of Petitioner and others similarly situated.
- 17
- 18

#### 19 **PETITIONER SEEKS REMEDY**

20 In addition to seeking compensatory, consequential and other damages,  
21 Petitioner seeks declaratory relief as to what (if any) party, entity or  
22 individual or group thereof is the owner of the promissory note executed at  
23 the time of the loan closing, and whether the Deed of Trust (Mortgage)  
24 secures any obligation of the Petitioner, and a Mandatory Injunction requiring  
25 re-conveyance of the subject property to the Petitioner or, in the alternative a  
26 Final Judgment granting Petitioner Quiet Title in the subject property.  
27  
28

1 ***PETITIONER HAS BEEN HARMED***

2 Petitioner has suffered significant harm and detriment as a result of the actions of  
3 Defendants.

4 Such harm and detriment includes economic and non-economic damages, and  
5 injuries to Petitioner's mental and emotional health and strength, all to be shown  
6 according to proof at trial.

7  
8 In addition, Petitioner will suffer grievous and irreparable further harm and  
9 detriment unless the equitable relief requested herein is granted.

10 **STATEMENT OF CLAIM**

11 ***DEFENDANTS LACK STANDING***

12 **No evidence of Contractual Obligation**

13 Defendants claim a controversy based on a contractual violation by Petitioner but  
14 have failed to produce said contract. Even if Defendants produced evidence of the  
15 existence of said contract in the form of an allegedly accurate photocopy of said  
16 document, a copy is only hearsay evidence that a contract actually existed at one  
17 point in time. A copy, considering the present state of technology, could be easily  
18 altered. As Lender only created one original and that original was left in the  
19 custody of Lender, it was imperative that Lender protect said instrument.  
20

21 In as much as the Lender is required to present the original on demand of  
22 Petitioner, there can be no presumption of regularity when the original is not so  
23 produced. In as much as Lender has refused Petitioner's request of the chain of  
24 custody of the security instrument in question by refusing to identify all current  
25 and past real parties in interest, there is no way to follow said chain of custody to  
26 insure, by verified testimony, that no alterations to the original provisions in the  
27 contract have been made. Therefore, the alleged copy of the original is only  
28

1 hearsay evidence that an original document at one time existed. Petitioner  
2 maintains that, absent production of admissible evidence of a contractual  
3 obligation on the part of Petitioner, Defendants are without standing to invoke the  
4 subject matter jurisdiction of the court.

### 5 **No Proper Evidence of Agency**

6 Defendants claim agency to represent the principal in a contractual agreement  
7 involving Petitioner, however, Defendants have failed to provide any evidence of  
8 said agency other than a pronouncement that agency has been assigned by some  
9 person, the true identity and capacity of whom has not been established.  
10 Defendants can hardly claim to be agents of a principal then refuse to identify said  
11 principal. All claims of agency are made from the mouth of the agent with no  
12 attempt to provide admissible evidence from the principal.  
13

14 Absent proof of agency, Defendants lack standing to invoke the subject matter  
15 jurisdiction of the court.

### 16 **Special Purpose Vehicle**

17  
18 Since the entity now claiming agency to represent the holder of the security  
19 instrument is not the original lender, Petitioner has reason to believe that the  
20 promissory note, upon consummation of the contract, was converted to a security  
21 and sold into a special purpose vehicle and now resides in a Real Estate Mortgage  
22 Investment Conduit (REMIC) as defined by the Internal Revenue Code and as  
23 such, cannot be removed from the REMIC as such would be a prohibited  
24 transaction. If the mortgage was part of a special purpose vehicle and was  
25 removed on consideration of foreclosure, the real party in interest would  
26 necessarily be the trustee of the special purpose vehicle. Nothing in the pleadings  
27 of Defendants indicates the existence of a special purpose vehicle, and the lack of a  
28

1 proper chain of custody documentation gives Petitioner cause to believe defendant  
2 is not the proper agent of the real party in interest.

3 ***CRIMINAL CONSPIRACY AND THEFT***

4 Defendants, by and through Defendant's Agents, conspired with other Defendants,  
5 et al, toward a criminal conspiracy to defraud Petitioner. Said conspiracy but are  
6 not limited to acts of negligence, breach of fiduciary duty, common law fraud,  
7 fraud by non-disclosure, and tortuous acts of conspiracy and theft, to include but  
8 not limited to, the assessment of improper fees to Petitioner by Lender, which were  
9 then used to fund the improper payment of commission fees to Agent in order to  
10 induce Agent to violate Agent's fiduciary duty to Petitioner.

11 ***AGENT PRACTICED UP-SELLING***

12  
13 By and through the above alleged conspiracy, Agent practiced up-selling to  
14 Petitioner. In so doing, Agent violated the trust relationship actively cultivated by  
15 Agent and supported by fact that Agent was licensed by the state. Agent further  
16 defrauded Petitioner by failing to disclose Agent's conspiratorial relationship to  
17 Lender, Agent violated Agent's fiduciary duty to Petitioner and the duty to  
18 provide fair and honest services, through a series of carefully crafted connivances,  
19 wherein Agent proactively made knowingly false and misleading statements of  
20 alleged fact to Petitioner, and by giving partial disclosure of facts intended to  
21 directly mislead Petitioner for the purpose of inducing Petitioner to make decisions  
22 concerning the acceptance of a loan product offered by the Lender. Said loan  
23 product was more expensive than Petitioner could legally afford. Agent acted with  
24 full knowledge that Petitioner would have made a different decision had Agent  
25 given complete disclosure.

1 ***FRAUDULENT INDUCEMENT***

2 Lender maliciously induced Petitioner to accept a loan product, Lender knew, or  
3 should have known, Petitioner could not afford in order to unjustly enrich Lender.

4 ***EXTRA PROFIT ON SALE OF PREDATORY LOAN PRODUCT***

5  
6 Said more expensive loan product was calculated to produce a higher return when  
7 sold as a security to an investor who was already waiting to purchase the loan as  
8 soon as it could be consummated.

9 **Extra Commission for Late Payments**

10 Lender acted with deliberate malice in order to induce Petitioner to enter into a  
11 loan agreement that Lender intended Petitioner would have difficulty paying. The  
12 industry standard payment to the servicer for servicing a mortgage note is 3% of  
13 the amount collected. However, if the borrower is late on payments, a 5% late fee  
14 is added and this fee is retained by the servicer. Thereby, the Lender stands to  
15 receive more than double the regular commission on collections if the borrower  
16 pays late.

17 **Extra Income for Handling Foreclosure**

18  
19 Lender acted with deliberate malice in order to induce petitioner to enter into a  
20 loan agreement on which Lender intended petitioner to default. In case of default,  
21 the Lender, acting as servicer, receives considerable funds for handling and  
22 executing the foreclosure process.

23 **Credit Default Swap Gambling**

24 Lender, after deliberately creating a loan intended to default is now in a position to  
25 bet on credit default swap, commonly referred to as a derivative as addressed more  
26 fully below. Since Lender designed the loan to fail, betting on said failure is  
27 essentially a sure thing.  
28



1 ***LENDER ATTEMPTING TO FRAUDULENTLY COLLECT ON VOID***  
2 ***LIEN***

3 Lender sold the security instrument after closing and received consideration in an  
4 amount in excess of the lien held by Lender. Since Lender retained the lien  
5 document upon the sale of the security instrument, Lender separated the lien from  
6 said security instrument, creating a fatal and irreparable flaw.

7 When Lender received consideration while still holding the lien and said  
8 consideration was in excess of the amount of the lien, Lender was in a position  
9 such that he could not be harmed and could not gain standing to enforce the lien.  
10 The lien was, thereby, rendered void.  
11

12 Since the separation of the lien from the security instrument creates such a  
13 considerable concern, said separation certainly begs a question: "Why would the  
14 Lender retain the lien when selling the security instrument?"

15 When you follow the money the answer is clear. The Lender will hold the lien for  
16 three years, then file an IRS Form 1099a and claim the full amount of the lien as  
17 abandoned funds and deduct the full amount from Lender's tax liability, thereby,  
18 receiving consideration a second time.

19 Later, in the expected eventuality of default by petitioner, Lender then claimed to  
20 transfer the lien to the holder of the security, however, the lien once satisfied, does  
21 not gain authority just because the holder, after receiving consideration, decides to  
22 transfer it to someone else.

23 ***LENDER PROFIT BY CREDIT DEFAULT SWAP DERIVATIVES***  
24

25 Lender further stood to profit by credit default swaps in the derivatives market, by  
26 way of inside information that Lender had as a result of creating the faulty loans  
27 sure to default. Lender was then free to invest on the bet that said loan would  
28 default and stood to receive unjust enrichment a third time. This credit default

1 swap derivative market scheme is almost totally responsible for the stock market  
2 disaster we now experience as it was responsible for the stock market crash in  
3 1907.

4 ***LENDER CHARGED FALSE FEES***

5 Lender charged fees to Petitioner that were in violation of the limitations imposed  
6 by the Real Estate Settlement Procedures Act as said fees were simply contrived  
7 and not paid to a third party vendor.

8 Lender charged other fees that were a normal part of doing business and should  
9 have been included in the finance charge.

10 Below is a listing of the fees charged at settlement. Neither at settlement, nor at  
11 any other time did Lender or Trustee provide documentation to show that the fees  
12 herein listed were valid, necessary, reasonable, and proper to charge Petitioner.

|    |  |            |
|----|--|------------|
| 14 | 803 Appraisal                          | \$196.00   |
| 15 | 808 Underwriting Fee                   | \$1,095.00 |
| 16 | 901 Interest from 01/22/09 to 02/01/09 | \$343.75   |
| 17 | 902 Mortgage Insurance Premium         | \$838.00   |
| 18 | 1101 Settlement fee                    | \$705.00   |
| 19 | 1106 Notary fee                        | \$100.00   |
| 20 | 1108 Title Insurance                   | \$951.50   |
| 21 | 1109 Lenders Coverage                  | \$429.00   |
| 22 | 1110 Owner's Coverage                  | \$1,045.00 |
| 23 | 1111 Environmental Protection Lien     | \$25.00    |
| 24 | 1112 Upkeep Assessment fee             | \$25.00    |
| 25 | 1201 Recording Fee                     | \$59.00    |
| 26 | 1202 City/county tax/stamp             | \$302.00   |

27 Debtor is unable to determine whether or not the above fees are valid in  
28 accordance with the restrictions provided by the various consumer protection laws.  
Therefore, please provide; a complete billing from each vendor who provided the  
above listed services; the complete contact information for each vendor who  
provided a billed service; clearly stipulate as to the specific service performed; a

1 showing that said service was necessary; a showing that the cost of said service is  
2 reasonable; a showing of why said service is not a regular cost of doing business  
3 that should rightly be included in the finance charge.

4 The above charges are hereby disputed and deemed unreasonable until such time  
5 as said charges have been demonstrated to be reasonable, necessary, and in  
6 accordance with the limitations and restrictions included in any and all laws, rules,  
7 and regulations intended to protect the consumer.

8 In the event lender fails to properly document the above charges, borrower will  
9 consider same as false charges. The effect of the above amounts that borrower  
10 would pay over the life of the note will be an overpayment of \$80,272.12 This  
11 amount will be reduced by the amount of items above when said items are fully  
12 documented.

13 ***RESPA PENALTY***

14  
15 From a cursory examination of the records, with the few available, the apparent  
16 RESPA violations are as follows: Good Faith Estimate not within limits, No HUD-  
17 1 Booklet, Truth In Lending Statement not within limits compared to Note, Truth  
18 in Lending Statement not timely presented, HUD-1 not presented at least one day  
19 before closing, No Holder Rule Notice in Note, No 1<sup>st</sup> Payment Letter.

20 The closing documents included no signed and dated : Financial Privacy Act  
21 Disclosure; Equal Credit Reporting Act Disclosure; notice of right to receive  
22 appraisal report; servicing disclosure statement; borrower's Certification of  
23 Authorization; notice of credit score; RESPA servicing disclosure letter; loan  
24 discount fee disclosure; business insurance company arrangement disclosure;  
25 notice of right to rescind.

26 The courts have held that the borrower does not have to show harm to claim a  
27 violation of the Real Estate Settlement Procedures Act, as the Act was intended to  
28 insure strict compliance. And, in as much as the courts are directed to assess a

1 penalty of no less than two hundred dollars and no more than two thousand,  
2 considering the large number enumerated here, it is reasonable to consider that the  
3 court will assess the maximum amount for each violation.

4 Since the courts have held that the penalty for a violation of RESPA accrues at  
5 consummation of the note, borrower has calculated that, the number of violations  
6 found in a cursory examination of the note, if deducted from the principal, would  
7 result in an overpayment on the part of the borrower, over the life of the note, of  
8 \$156,511.44.

9 If the violation penalty amounts for each of the unsupported fees listed above are  
10 included, the amount by which the borrower would be defrauded is \$168,523.68  
11 Adding in RESPA penalties for all the unsupported settlement fees along with the  
12 TILA/Note variance, it appears that lender intended to defraud borrower in the  
13 amount of \$405,307.24

14 ***LENDER CONSPIRED WITH APPRAISER***

15 Lender, in furtherance of the above referenced conspiracy, conspired with  
16 appraiser for the purpose of preparing an appraisal with a falsely stated price, in  
17 violation of appraiser's fiduciary duty to Petitioner and appraiser's duty to provide  
18 fair and honest services, for the purpose of inducing Petitioner to enter into a loan  
19 product that was fraudulent toward the interests of Petitioner.

20 ***LENDER CONSPIRED WITH TRUSTEE***

21  
22 Lender conspired with the trust Agent at closing to create a condition of stress for  
23 the specific purpose of inducing Petitioner to sign documents without allowing  
24 time for Petitioner to read and fully understand what was being signed.

25 The above referenced closing procedure was a carefully crafted connivance,  
26 designed and intended to induce Petitioner, through shame and trickery, in  
27 violation of trustee's fiduciary duty to Petitioner and the duty to provide fair and  
28 honest services, to sign documents that Petitioner did not have opportunity to read

1 and fully understand, thereby, denying Petitioner full disclosure as required by  
2 various consumer protection statutes.

3 ***DECEPTIVE ADVERTISING AND OTHER UNFAIR BUSINESS***  
4 ***PRACTICES***

5 In the manner in which Defendants have carried on their business enterprises, they  
6 have engaged in a variety of unfair and unlawful business practices prohibited by  
7 *15 USC Section 45* et seq. (Deceptive Practices Act).  
8

9 Such conduct comprises a pattern of business activity within the meaning of such  
10 statutes, and has directly and proximately caused Petitioner to suffer economic and  
11 non-economic harm and detriment in an amount to be shown according to proof at  
12 trial of this matter.

13 ***EQUITABLE TOLLING FOR TILA AND RESPA***

14 The Limitations Period for Petitioners' Damages Claims under TILA and RESPA  
15 should be Equitably Told due to the DEFENDANTS' Misrepresentations and  
16 Failure to Disclose.

17 Any claims for statutory and other money damages under the Truth in Lending Act  
18 (*15 U.S.C. § 1601*, et. seq.) and under the Real Estate Settlement Procedures Act  
19 (*12 U.S.C. § 2601* et. seq.) are subject to a one-year limitations period; however,  
20 such claims are subject to the equitable tolling doctrine. The Ninth Circuit has  
21 interpreted the TILA limitations period in § 1640(e) as subject to equitable tolling.  
22 In *King v. California*, 784 F.2d 910 (9th Cir.1986), the court held that given the  
23 remedial purpose of TILA, the limitations period should run from the date of  
24 consummation of the transaction, but that "the doctrine of equitable tolling may, in  
25 appropriate circumstances, suspend the limitations period until the borrower  
26 discovers or has reasonable opportunity to discover the fraud or nondisclosures that  
27  
28



1 form the basis of the TILA action." *King v. California*, 784 F.2d 910, 915 9th Cir.  
2 1986).

3 Likewise, while the Ninth Circuit has not taken up the question whether 12 U.S.C.  
4 § 2614, the anti-kickback provision of RESPA, is subject to equitable tolling, other  
5 Courts have, and hold that such limitations period may be equitably tolled. The  
6 Court of Appeals for the District of Columbia held that § 2614 imposes a strictly  
7 jurisdictional limitation, *Hardin v. City Title & Escrow Co.*, 797 F.2d 1037, 1039-  
8 40 (D.C. Cir. 1986), while the Seventh Circuit came to the opposite conclusion.  
9 *Lawyers Title Ins. Corp. v. Dearborn Title Corp.*, 118 F.3d 1157, 1164 (7th Cir.  
10 1997). District courts have largely come down on the side of the Seventh Circuit in  
11 holding that the one-year limitations period in § 2614 is subject to equitable  
12 tolling. See, e.g., *Kerby v. Mortgage Funding Corp.*, 992 F.Supp. 787, 791-98  
13 (D.Md.1998); *Moll v. U.S. Life Title Ins. Co.*, 700 F.Supp. 1284, 1286-89  
14 (S.D.N.Y.1988). Importantly, the Ninth Circuit, as noted above, has interpreted the  
15 TILA limitations period in 15 U.S.C. § 1640 as subject to equitable tolling; the  
16 language of the two provisions is nearly identical. *King v. California*, 784 F.2d at  
17 914. While not of precedential value, this Court has previously found both the  
18 TILA and RESPA limitations periods to be subject to equitable tolling. *Blaylock v.*  
19 *First American Title Ins. Co.*, 504 F.Supp.2d 1091, (W.D. Wash. 2007). 1106-07.  
20 The Ninth Circuit has explained that the doctrine of equitable tolling "focuses on  
21 excusable delay by the Petitioner," and inquires whether "a reasonable Petitioner  
22 would ... have known of the existence of a possible claim within the limitations  
23 period." *Johnson v. Henderson*, 314 F.3d 409, 414 (9th Cir.2002), *Santa Maria v.*  
24 *Pacific Bell*, 202 F.3d 1170, 1178 (9th Cir.2000). Equitable tolling focuses on the  
25 reasonableness of the Petitioner's delay and does not depend on any wrongful  
26 conduct by the Defendants. *Santa Maria*. at 1178.  
27  
28



1 ***BUSINESS PRACTICES CONCERNING DISREGARDING OF***  
2 ***UNDERWRITING STANDARDS***

3 Traditionally, Lenders required borrowers seeking mortgage loans to document  
4 their income and assets by, for example, providing W-2 statements, tax returns,  
5 bank statements, documents evidencing title, employment information, and other  
6 information and documentation that could be analyzed and investigated for its  
7 truthfulness, accuracy, and to determine the borrower's ability to repay a particular  
8 loan over both the short and long term. Defendants deviated from and disregarded  
9 these standards, particularly with regard to its riskier and more profitable loan  
10 products.

11 ***Low-Documentation/No-Documentation Loans.***  
12

13 Driven by its desire for market share and a perceived need to maintain  
14 competitiveness with the likes of Countrywide, Defendants began to introduce an  
15 ever increasing variety of low and no documentation loan products, including the  
16 HARMs and HELOCs described hereinabove, and began to deviate from and ease  
17 its underwriting criteria, and then to grant liberal exceptions to the already eased  
18 underwriting standards to the point of disregarding such standards. This quickened  
19 the loan origination process, allowing for the generation of more and more loans  
20 which could then be resold and/or securitized in the secondary market.

21 Defendants marketed no-documentation/low-documentation loan programs that  
22 included HARMs and HELOCs, among others, in which loans were given based  
23 on the borrower's "stated income" or "stated assets" (SISA) neither of which were  
24 verified. Employment was verbally confirmed, if at all, but not further investigated,  
25 and income, if it was even considered as a factor, was to be roughly consistent with  
26 incomes in the types of jobs in which the borrower was employed. When  
27 borrowers were requested to document their income, they were able to do so  
28 through information that was less reliable than in a full-documentation loan.

1 For stated income loans, it became standard practice for loan processors, loan  
2 officers and underwriters to rely on www.salary.com to see if a stated income was  
3 reasonable. Such stated income loans, emphasizing loan origination from a  
4 profitability standpoint at the expense of determining the ability of the borrower to  
5 repay the loan from an underwriting standpoint, encouraged the overstating and/or  
6 fabrication of income.

### 7 **Easing of Underwriting Standards**

8 In order to produce more loans that could be resold in the secondary mortgage  
9 market, Defendants also relaxed, and often disregarded, traditional underwriting  
10 standards used to separate acceptable from unacceptable risk. Examples of such  
11 relaxed standards were reducing the base FICO score needed for a SISA loan.

12 Other underwriting standards that Defendants relaxed included qualifying interest  
13 rates (the rate used to determine whether borrowers can afford the loan), loan to  
14 value ratios (the amount of loan(s) compared to the appraised/sale price of the  
15 property, whichever is lower), and debt-to-income ratios (the amount of monthly  
16 income compared to monthly debt service payments and other monthly payment  
17 obligations.  
18

19 With respect to HARMS, Defendants underwrote loans without regard to the  
20 borrower's long-term financial circumstances, approving the loan based on the  
21 initial fixed rate without taking into account whether the borrower could afford the  
22 substantially higher payment that would inevitably be required during the  
23 remaining term of the loan.

24 With respect to HELOCs, Defendants underwrote and approved such loans based  
25 only on the borrower's ability to afford the interest-only payment during the initial  
26 draw period of the loan, rather than on the borrower's ability to afford the  
27 subsequent, fully amortized principal and interest payments.  
28

1 As Defendants pushed to expand market share, they eased other basic underwriting  
2 standards. For example, higher loan-to-value (LTV) and combined loan-to-value  
3 (CLTV) ratios were allowed. Likewise, higher debt-to-income (DTI) ratios were  
4 allowed. At the same time that they eased underwriting standards the Defendants  
5 also were encouraging consumers to go further into debt in order to supply the very  
6 lucrative aftermarket of mortgage backed securities. The relaxed underwriting  
7 standards created the aftermarket supply they needed. As a result, the Defendants  
8 made it easy for the unwary consumer to take on more debt than he could afford by  
9 encouraging unsound financial practices, all the while knowing defaults would  
10 occur more and more frequently as the credit ratios of citizens reached the limit of  
11 the new relaxed underwriting standards.

12 Defendants knew, or in the exercise of reasonable care should have known, from  
13 its own underwriting guidelines industry standards that it was accumulating and  
14 selling/reselling risky loans that were likely to end up in default. However, as the  
15 pressure mounted to increase market share and originate more loans, Defendants  
16 began to grant "exceptions" even to its relaxed underwriting guidelines. Such was  
17 the environment that loan officers and underwriters were, from time to time, placed  
18 in the position of having to justify why they did not approve a loan that failed to  
19 meet underwriting criteria.

### 20 **Risk Layering**

21  
22 Defendants compromised its underwriting even further by risk layering, i.e.  
23 combining high risk loans with one or more relaxed underwriting standards.

24 Defendants knew, or in the exercise of reasonable care should have known, that  
25 layered risk would increase the likelihood of default. Among the risk layering  
26 Defendants engaged in were approving HARM loans with little to no down  
27 payment, little to no documentation, and high DTI/LTV/CLTV ratios. Despite such  
28

1 knowledge, Defendants combined these very risk factors in the loans it promoted  
2 to borrowers.

3 Loan officers and mortgage Agents aided and abetted this scheme by working  
4 closely with other mortgage Lenders/mortgage bankers to increase loan  
5 originations, knowing or having reason to believe that Defendants and other  
6 mortgage Lenders/mortgage bankers with whom they did business ignored basic  
7 established underwriting standards and acted to mislead the borrower, all to the  
8 detriment of the borrower and the consumer of loan products..

9 Petitioner is informed and believe, and on that basis allege, that Defendants, and  
10 each of them, engaged and/or actively participated in, authorized, ratified, or had  
11 knowledge of, all of the business practices described above in paragraphs 30-42 of  
12 this Complaint  
13

14 ***UNJUST ENRICHMENT***

15 Petitioner is informed and believes that each and all of the Defendants received a  
16 benefit at Petitioner's expense, including but not limited to the following: To the  
17 Agent, commissions, yield spread premiums, spurious fees and charges, and other  
18 "back end" payments in amounts to be proved at trial; To the originating Lender,  
19 commissions, incentive bonuses, resale premiums, surcharges and other "back end"  
20 payments in amounts to be proved at trial; To the investors, resale premiums, and  
21 high rates of return; To the servicers including EMS, servicing fees, percentages of  
22 payment proceeds, charges, and other "back end" payments in amounts to be  
23 proved at trial; To all participants, the expectation of future revenues from charges,  
24 penalties and fees paid by Petitioner when the unaffordable LOAN was foreclosed  
25 or refinanced.

26 By their misrepresentations, omissions and other wrongful acts alleged heretofore,  
27 Defendants, and each of them, were unjustly enriched at the expense of Petitioner,  
28

1 and Petitioner was unjustly deprived, and is entitled to restitution in the amount of  
2 \$405,307.24

3 ***CLAIM TO QUIET TITLE.***

4 Petitioner properly averred a claim to quiet title. Petitioner included both the street  
5 address, and the Assessor's Parcel Number for the property. Petitioner has set forth  
6 facts concerning the title interests of the subject property. Moreover, as shown  
7 above, Petitioner's claims for rescission and fraud are meritorious. As such,  
8 Petitioner's bases for quiet title are meritorious as well.

9  
10 Defendants have no title, estate, lien, or interest in the Subject Property in that the  
11 purported power of sale contained in the Deed of Trust is of no force or effect  
12 because Defendants' security interest in the Subject Property has been rendered  
13 void and that the Defendants are not the holder in due course of the Promissory  
14 Note. Moreover, because Petitioner properly pled all Defendants' involvement in a  
15 fraudulent scheme, all Defendants are liable for the acts of its co-conspirators,

16 "a Petitioner is entitled to damages from those Defendants who concur  
17 in the tortuous scheme with knowledge of its unlawful purpose."

18 *Wyatt v. Union Mortgage Co.*, 24 Cal. 3d 773, 157 Cal. Rptr. 392,  
19 598 P.2d 45 (1979); *Novartis Vaccines and Diagnostics, Inc. v. Stop*  
20 *Huntingdon Animal Cruelty USA, Inc.*, 143 Cal. App. 4th 1284, 50  
21 Cal. Rptr. 3d 27 (1st Dist. 2006); *Kidron v. Movie Acquisition Corp.*,  
22 40 Cal. App. 4th 1571, 47 Cal. Rptr. 2d 752 (2d Dist. 1995).

23 ***SUFFICIENCY OF PLEADING***

24  
25 Petitioner has sufficiently pled that relief can be granted on each and every one of  
26 the Complaint's causes of action. A complaint should not be dismissed "unless it  
27 appears beyond doubt that the Petitioner can prove no set of facts in support of  
28 Petitioner claim which would entitle Petitioner to relief." *Housley v. U.S.* (9th Cir.



1 Nev. 1994) 35 F.3d 400, 401. "All allegations of material fact in the complaint are  
2 taken as true and construed in the light most favorable to Petitioner." *Argabright v.*  
3 *United States*, 35 F.3d 1476, 1479 (9th Cir. 1996).

4 Attendant, the Complaint includes a "short, plain statement, of the basis for relief."  
5 Fed. Rule Civ. Proc. 8(a). The Complaint contains cognizable legal theories,  
6 sufficient facts to support cognizable legal theories, and seeks remedies to which  
7 Petitioner is entitled. *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th  
8 Cir. 1988); *King v. California*, 784 F.2d 910, 913 (9th Cir. 1986). Moreover, the  
9 legal conclusions in the Complaint can and should be drawn from the facts alleged,  
10 and, in turn, the court should accept them as such. *Clegg v. Cult Awareness*  
11 *Network*, 18 F.3d 752 (9th Cir. 1994). Lastly, Petitioner's complaint contains  
12 claims and has a probable validity of proving a "set of facts" in support of their  
13 claim entitling them to relief. *Housley v. U.S.* (9th Cir. Nev. 1994) 35 F.3d 400,  
14 401. Therefore, relief as requested herein should be granted.

## 15 CAUSES OF ACTION

### 16 ***BREACH OF FIDUCIARY DUTY***

17  
18 Defendants Agent, appraiser, trustee, Lender, et al, and each of them, owed  
19 Petitioner a fiduciary duty of care with respect to the mortgage loan transactions  
20 and related title activities involving the Trust Property.

21 Defendants breached their duties to Petitioner by, *inter alia*, the conduct described  
22 above. Such breaches included, but were not limited to, ensuring their own and  
23 Petitioners' compliance with all applicable laws governing the loan transactions in  
24 which they were involved, including but not limited to, TILA, HOEPA, **RESPA**  
25 and the Regulations X and Z promulgated there under.

26 Defendant's breaches of said duties were a direct and proximate cause of economic  
27 and non-economic harm and detriment to Petitioner(s).  
28



1 Petitioner did suffer economic, non-economic harm, and detriment as a result of  
2 such conduct, all to be shown according to proof at trial of this matter.

3 ***CAUSE OF ACTION - NEGLIGENCE/NEGLIGENCE PER SE***

4 Defendants owed a general duty of care with respect to Petitioners, particularly  
5 concerning their duty to properly perform due diligence as to the loans and related  
6 transactional issues described hereinabove.

7  
8 In addition, Defendants owed a duty of care under TILA, HOEPA, **RESPA** and the  
9 Regulations X and Z promulgated there under to, among other things, provide  
10 proper disclosures concerning the terms and conditions of the loans they marketed,  
11 to refrain from marketing loans they knew or should have known that borrowers  
12 could not afford or maintain, and to avoid paying undue compensation such as  
13 "yield spread premiums" to mortgage Agents and loan officers.

14 Defendants knew or in the exercise of reasonable care should have known, that the  
15 loan transactions involving Petitioner and other persons similarly situated were  
16 defective, unlawful, violative of federal and state laws and regulations, and would  
17 subject Petitioner to economic and non-economic harm and other detriment.

18 Petitioner is among the class of persons that TILA, HOEPA, **RESPA** and the  
19 Regulations X and Z promulgated there under were intended and designed to  
20 protect, and the conduct alleged against Defendants is the type of conduct and  
21 harm which the referenced statutes and regulations were designed to deter.

22 As a direct and proximate result of Defendant's negligence, Petitioner suffered  
23 economic and non-economic harm in an amount to be shown according to proof at  
24 trial.  
25  
26  
27  
28

***AGENT: COMMON LAW FRAUD***

If any Agents' misrepresentations made herein were not intentional, said misrepresentations were negligent. When the Agents made the representations alleged herein, he/she/it had no reasonable ground for believing them to be true.

Agents made these representations with the intention of inducing Petitioner to act in reliance on these representations in the manner hereafter alleged, or with the expectation that Petitioner would so act.

Petitioner is informed and believes that Agent et al, facilitated, aided and abetted various Agents in their negligent misrepresentation, and that various Agents were negligent in not implementing procedures such as underwriting standards oversight that would have prevented various Agents from facilitating the irresponsible and wrongful misrepresentations of various Agents to Defendants.

Petitioner is informed and believes that Agent acted in concert and collusion with others named herein in promulgating false representations to cause Petitioner to enter into the LOAN without knowledge or understanding of the terms thereof.

As a proximate result of the negligent misrepresentations of Agents as herein alleged, the Petitioner sustained damages, including monetary loss, emotional distress, loss of credit, loss of opportunities, attorney fees and costs, and other damages to be determined at trial. As a proximate result of Agents' breach of duty and all other actions as alleged herein, Defendants has suffered severe emotional distress, mental anguish, harm, humiliation, embarrassment, and mental and physical pain and anguish, all to Petitioner's damage in an amount to be established at trial.

**PETITIONER PROPERLY AVERRED A CLAIM FOR BREACH OF THE  
IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING.**

Petitioner properly pled Defendants violated the breach of implied covenant of good faith and fair dealing. "Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." *Price v. Wells Fargo Bank*, 213 Cal.App.3d 465, 478, 261 Cal. Rptr. 735 (1989); Rest.2d Contracts § 205. A mortgage Agent has fiduciary duties. *Wyatt v. Union Mortgage Co.*, (1979) 24 Cal. 3d. 773. Further, In *Jonathan Neil & Associates, Inc. v Jones*, (2004) 33 Cal. 4th 917, the court stated:

In the area of insurance contracts the covenant of good faith and fair dealing has taken on a particular significance, in part because of the special relationship between the insurer and the insured. The insurer, when determining whether to settle a claim, must give at least as much consideration to the welfare of its insured as it gives to its own interests. . . The standard is premised on the insurer's obligation to protect the insured's interests . . . *Id. at 937*.

Likewise, there is a special relationship between an Agent and borrower. "A person who provides Agency services to a borrower in a covered loan transaction by soliciting Lenders or otherwise negotiating a consumer loan secured by real property, is the fiduciary of the consumer...this fiduciary duty [is owed] to the consumer regardless of whom else the Agent may be acting as an Agent for . . . The fiduciary duty of the Agent is to deal with the consumer in *good faith*. If the Agent knew or should have known that the Borrower will or has a likelihood of defaulting ... they have a fiduciary duty to the borrower not to place them in that loan." (California Department of Real Estate, *Section 8: Fiduciary Responsibility*, [www.dre.ca.gov](http://www.dre.ca.gov)). [*Emphasis Added*].

All Defendants, willfully breached their implied covenant of good faith and fair dealing with Petitioner when Defendants: (1) Failed to provide all of the proper

1 disclosures; (2) Failed to provide accurate Right to Cancel Notices; (3) Placed  
2 Petitioner into Petitioner's current loan product without regard for other more  
3 affordable products; (4) Placed Petitioner into a loan without following proper  
4 underwriting standards; (5) Failed to disclose to Petitioner that Petitioner was  
5 going to default because of the loan being unaffordable; (6) Failed to perform valid  
6 and /or properly documented substitutions and assignments so that Petitioner could  
7 ascertain Petitioner rights and duties; and (7) Failed to respond in good faith to  
8 Petitioner's request for documentation of the servicing of Petitioner's loan and the  
9 existence and content of relevant documents. Additionally, Defendants breached  
10 their implied covenant of good faith and fair dealing with Petitioner when  
11 Defendants initiated foreclosure proceedings even without the right under an  
12 alleged power of sale because the purported assignment was not recorded and by  
13 willfully and knowingly financially profiting from their malfeasance. Therefore,  
14 due to the special relationship inherent in a real estate transaction between Agent  
15 and borrower, *and* all Defendants' participation in the conspiracy, the Motion to  
16 Dismiss should be denied.

17 ***CAUSE OF ACTION VIOLATION OF TRUTH IN LENDING ACT 15***  
18 ***U.S.C. §1601 ET SEQ***

19 Petitioner hereby incorporates by reference, re-pleads and re-alleges each and  
20 every allegation contained in all of the paragraphs of the General Allegations and  
21 Facts Common to All Causes of Action as though the same were set forth herein.  
22

23 Petitioner is informed and believes that Defendant's violation of the provisions of  
24 law rendered the credit transaction null and void, invalidates Defendant's claimed  
25 interest in the Subject Property, and entitles Petitioner to damages as proven at  
26 trial.

***INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS***

The conduct committed by Defendants, driven as it was by profit at the expense of increasingly highly leveraged and vulnerable consumers who placed their faith and trust in the superior knowledge and position of Defendants, was extreme and outrageous and not to be tolerated by civilized society.

Defendants either knew that their conduct would cause Petitioner to suffer severe emotional distress, or acted in conscious and/or reckless disregard of the probability that such distress would occur.

Petitioner did in fact suffer severe emotional distress as an actual and proximate result of the conduct of Defendants as described hereinabove.

As a result of such severe emotional distress, Petitioner suffered economic and non economic harm and detriment, all to be shown according to proof at trial of this matter.

Petitioner demands that Defendants provide Petitioner with release of lien on the lien signed by Petitioner and secure to Petitioner quite title;

Petitioner demands Defendants disgorge themselves of all enrichment received from Petitioner as payments to Defendants based on the fraudulently secured promissory note in an amount to be calculated by Defendants and verified to Petitioner;

Petitioner further demands that Defendants pay to Petitioner an amount equal to treble the amount Defendants intended to defraud Petitioner of which amount Petitioner calculated to be equal to \$1,215,921.72

**PRAYER**

WHEREFORE, Petitioner prays for judgment against the named Defendants, and each of them, as follows:

1 For an emergency restraining order enjoining lender and any successor in  
2 interest from foreclosing on Petitioner's Property pending adjudication of  
3 Petitioner's claims set forth herein;

4 For a permanent injunction enjoining Defendants from engaging in the  
5 fraudulent, deceptive, predatory and negligent acts and practices alleged  
6 herein;

7 For quiet title to Property;

8 For rescission of the loan contract and restitution by Defendants to Petitioner  
9 according to proof at trial;

10 For disgorgement of all amounts wrongfully acquired by Defendants  
11 according to proof at trial;

12 For actual monetary damages in the amount \$405,307.24;

13 For pain and suffering due to extreme mental anguish in an amount to be  
14 determined at trial.

15 For pre-judgment and post-judgment interest according to proof at trial;

16 For punitive damages according to proof at trial in an amount equal to  
17 \$1,215,921.72.

18 For attorney's fees and costs as provided by statute; and,

19 For such other relief as the Court deems just and proper.

20 **Respectfully Submitted,**

21   
22 **Shelley von Brincken**